IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

AS.No. 437 of 1993()

OS.79/1979 of PRINCIPAL SUB COURT,PARAVUR
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APPELLANT/PLAINTIFF

T.GEORGE JOHN, GENERAL MANAGER
HINDUSTAN INSECTICIDES LTD.
ALWAYE

BY ADV. SRI.GEORGE VARGHESE

RESPONDENT/ DEFENDANT :

HINDUSTAN INSECTICIDES LTD. REPRESENTED BY
BY DR. R.S. HAMSA, C/O MANAGING DIRECTOR,
HINDUSTAN INSECTICIDES LTD.
HANS BAHADUR SHAH ZAFAR MARG
NEW DELHI-2

BY ADV. SRI.A.M.SHAFFIQUE

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 24/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

A.S No.437 of 1993

Dated this the 24th day of July 2007

JUDGMENT

The plaintiff in O.S. No.79 of 1979 on the file of the Principal Sub judge, Paravur is the appellant. The plaintiff was working as the General Manager of the respondent company. While he was working at Udyogamandal he was transferred as General Manager (Corporate Management)to the head office ,New Delhi. Initially the plaintiff filed a suit for declaration that the transfer was illegal and inoperative. Subsequently he amended his pleadings by incorporating an additional relief as to recovery of damages to the tune of Rs. 1,86,919.54 Ps. Even before the amendment of pleadings the appellant filed an application for voluntary retirement from the service of the company. No action was taken by the respondent company. Subsequently the appellant filed another application to treat his request for voluntary retirement as a letter of resignation. The respondent company contended that the transfer was a valid one by public interest and for administrative expediency The malafides, arbitrariness and illegality alleged in the plaint were denied by the respondent company. Subsequently the plaint was amended.

2. The respondent company filed an additional written statement to the amendment plaint. It was contended that the appellant resigned from the service of the company and thereafter he is not entitled to any

benefit under the voluntary retirement Scheme or compensation as claimed in the plaint.

3. On the side of the plaintiff PWs1 and 2 were examined. A1 to A65 were proved and marked. On the side of the defendants DW1 & DW2 were examined. Exts B1 to B38 were proved and marked. Finally the suit was dismissed. The appellant filed A.S. 170/84 before this court . This court after confirming the findings, remanded the suit only for the limited purpose of considering the plaintiff's claim of Rs. 33,470/- towards the voluntary retirement benefits. This court found that the appellant is entitled to get a decree for an amount of Rs. 86.20 towards the daily allowance as against the claim of Rs. 791.10 made in the plaint and for . Rs.645-88/- towards the reimbursement of medical expenses.

The following are the directions contained in the remand order.

> *(i) The trial court is directed to enter a finding regarding the claim for Rs. 33,470/- made by the plaintiff towards voluntary retirement benefits allegedly due to him under the voluntary retirement benefit scheme on the basis of Exhibit A31 request for voluntary retirement.*
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> *(ii) The trial court is further directed to pass a decree in the suit, in the light of the findings recorded by us in this judgment and also on the basis of the finding to be recorded by the trial court on the basis of the remand ordered by us as per this judgment*

4. After remand the appellant filed a statement admitting the receipt of the amount of Rs. 24,750/- from the defendant company, out of

his claim of Rs. 33,470/-. But he had claimed interest at the rate of 18% per annum on the entire amount of Rs. 33,470/- from 14-12-1979 onwards. He claimed future interest at the rate of 18% on the balance amount of Rs. 28,300/-

5. In the appeal the appellant claimed a total sum of Rs.33,470/- under voluntary retirement scheme. From that amount 24,750/- was paid as gratuity. So the appellant is claiming the balance amount and also interest for the entire amount at the rate of 18%

6. Ext.A31 is the letter submitted by the appellant on 14-12-1979 requesting permission to take retirement under Voluntary Retirement Scheme. No action was taken against it. Finally on 9-1-1980 as per Ext.B35 letter the appellant himself had requested the respondent to treat Ext.A31 as a request for resignation. That request was accepted by the respondent company. So as rightly held by the court below the appellant is entitled to get no further amount on account of Voluntary retirement scheme. The respondent had paid the amount of Rs. 24,750/- as gratuity. Even according to the respondent as per letter dated 9-1-1980 he was allowed to resign from the service of the company with effect from 14-12-1979.

7. The court below itself had found that even in the case of

resignation, employee is entitled to get gratuity because those amounts are recovered from his salary. The gratuity ought to have been paid immediately on 14-12-1979. Admittedly it was paid on 15-3-1983. That too after the disposal of the suit by the court below on 17-2-1983. The court below took a view that since the amount was paid within a month from the date of the decree, there was no delay .

8. I find it difficult to agree with the view expressed by the court below. The liability of the employer to release the gratuity arises on the moment when the employee retires. So withholding of gratuity was illegal and the appellant is entitled to get interest on that amount. But considering the financial position of the company at present, I am of the view that the claim for 18% interest cannot be allowed. He is entitled to get only 9% interest from 14-12-1979 till 15-3-1983 i.e from the date of his resignation till the date on which the amount was paid.

In the result, the appeal is allowed as stated above Other claims raised in the appeal are duly allowed.

K.PADMANABHAN NAIR,JUDGE

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